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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff-Respondent,  
  
v.  
  
DOUGLAS ELIGHA TAYLOR,  
  
Defendant-Petitioner.

No. CR 95-01094-GHK-1

GOVERNMENT'S MOTION TO DISMISS  
PETITIONER'S REQUEST TO INITIATE  
REVOCATION PROCEEDINGS FOR  
SUPERVISED RELEASE VIOLATION

Plaintiff-Respondent United States of America, by and through  
its counsel of record, the United States Attorney for the Central  
District of California and Assistant United States Attorney Sue J.  
Bai, hereby files its motion to dismiss defendant-petitioner Douglas  
Eligha Taylor's ("petitioner") request to initiate revocation  
proceedings for violation of supervised release. In the alternative,  
the government requests the Court to deny petitioner's motion.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendant-Petitioner Douglas Eligha Taylor ("petitioner") filed a *pro se* petition requesting initiation of revocation proceedings for violation of supervised release. (Dkt. No. 44 at 1.)

Petitioner's request should be dismissed because under Federal Rule of Criminal Procedure 32.1, petitioner, who remains in state custody, is not entitled to initiate revocation proceedings until he is in federal custody for violating a condition of supervised release. In the alternative, the Court should deny petitioner's request for counsel and request for preliminary and revocation hearings because his current purpose for seeking relief--to challenge his state court conviction during revocation proceedings--is improper. Moreover, challenging his state court conviction during revocation proceedings would not alter the fact that a certified copy of petitioner's state conviction record would be sufficient to revoke supervised release.

**II. BACKGROUND AND PROCEDURAL HISTORY**

**A. Petitioner is convicted and sentenced in federal court**

On January 26, 1996, petitioner pleaded guilty to the following charges in the five-count Indictment: two charges for bank robbery, in violation of 18 U.S.C. § 2113(a)(Counts 1 & 4); two charges for armed bank robbery, in violation of 18 U.S.C. § 2113(a) (d) (Counts 2 & 5); and use of a firearm during a crime of violence and forfeiture of the firearm, in violation of 18 U.S.C. §§ 924(c), 3665 (Count 3).

1 (Docket Number ("Dkt. No.") 8; Probation Office Violation Report  
2 ("VR") at 1.)<sup>1</sup>

3 On April 15, 1996, the Court sentenced petitioner to 147 months  
4 of imprisonment. (Dkt. No. 28.) Petitioner's sentence was comprised  
5 of 87 months on Counts 1, 2, 4, and 5, all to be served concurrently,  
6 and 60 months on Count 3, to be served consecutively to the other  
7 counts. (Id.) The Court also imposed five years of supervised  
8 release, comprised of five years on Counts 2 and 5 and three years on  
9 Counts 1, 3, and 4, all to run concurrently. (Id.)

10 The Court imposed several conditions on petitioner's five-year  
11 term of supervised release. Among them was the requirement that  
12 petitioner comply with General Order 318 of the Central District of  
13 California, which imposed the standard conditions of probation and  
14 supervised release, including the condition that petitioner not  
15 commit another federal, state or local crime. (Id.) The Court  
16 issued the Judgment and Commitment Order on April 16, 1996. (Dkt.  
17 No. 29.) On April 9, 2007, petitioner was released from the custody  
18 of the Federal Bureau of Prisons, and his five-year term of  
19 supervised release commenced. (VR at 1.)

20 **B. Petitioner is convicted and sentenced in California state**  
21 **court during period of supervised release**

22 On or about August 14, 2008, while petitioner was subject to the  
23 Court's supervision, petitioner entered his personal bank wearing all  
24 black clothing and a scarf, while carrying a semi-automatic handgun,  
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26 <sup>1</sup> Unless otherwise indicated, all citations to "Dkt. No." refer  
27 to the clerk's record in CR 95-01094, petitioner's underlying  
28 criminal case in the Central District of California. The Probation  
Office has filed separately the Violation Report, the Petition for  
Bench Warrant following supervised release violation, and the  
Supplemental Report with the Court.

1 and demanded money from bank employees. (Probation Office  
2 Supplemental Report ("SR") at 1.) He threatened one bank employee by  
3 pushing the gun to her side while demanding that she give him money.  
4 (Id.) During the investigation, petitioner attempted to enlist one  
5 neighbor as an alibi witness for his whereabouts during the bank  
6 robbery. (Id.)

7 After a jury trial, petitioner was convicted of the following  
8 charges: four counts of robbery, in violation of California Penal  
9 Code § 211 (Counts 2-5); one count of felon in possession of a  
10 firearm, in violation of California Penal Code § 12021(a) (Count 6);  
11 one count of receiving known stolen property, in violation of  
12 California Penal Code § 496(a) (Count 7); and two counts of assault  
13 with a firearm on a person, in violation of California Penal Code  
14 § 245(a)(2) (Counts 8 & 9), all of which were felonies. (Id. at 2.)  
15 The state court sentenced petitioner to serve a term of imprisonment,  
16 and he is currently serving his sentence in the custody of the  
17 California Department of Corrections.<sup>2</sup> (Id.)

18 **C. Probation Office files petition alleging that petitioner**  
19 **violated terms of supervised release**

20 On October 15, 2008, the Probation Office filed a petition to  
21 issue a bench warrant for petitioner, alleging he violated the terms  
22 of his supervised release based on the following actions: (1)  
23 committing burglary on or about August 14, 2008, in violation of  
24 California Penal Code § 459; (2) committing robbery on or about  
25 August 14, 2008, in violation of California Penal Code § 211; (3)  
26 possessing a firearm as a felon on or about August 14, 2008, in  
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28 <sup>2</sup> The state court records do not provide details of petitioner's  
sentence, including his term of imprisonment. (SR at 2.)

1 violation of California Penal Code § 12021; (4) receiving stolen  
2 property on or about August 14, 2008, in violation of California  
3 Penal Code § 496; (5) public intoxication on or about August 7, 2008,  
4 in violation of California Penal Code § 647; (6) failing to report  
5 for drug testing as directed by the Probation Officer on or about  
6 August 7, 2008; (7) failing to notify the Probation Officer of his  
7 arrest on August 7, 2008; and (8) using illicit drugs and alcohols on  
8 or about August 14, 2008. (Petition for Bench Warrant at 1.)

9 According to petitioner, "final sentencing was entered" and  
10 state criminal proceedings concluded on April 1, 2016. (Dkt. No. 44  
11 at 3.)<sup>3</sup> On May 17, 2016, while petitioner was in state custody, a  
12 federal warrant was lodged as a detainer. (Dkt. No. 44, Exh. 1.)  
13 The petitioner currently remains in state custody and is scheduled to  
14 be released on June 24, 2024. (SR at 2.)

15 **D. Petitioner files request to initiate revocation proceedings**  
16 **for violation of supervised release**

17 On December 14, 2016, petitioner filed *pro se* a request to  
18 initiate revocation proceedings for violation of supervised release.  
19 (Dkt No. 44.) Petitioner requests that (1) the Court appoint counsel  
20 to represent him in the supervised release revocation proceedings and  
21 that (2) the Court promptly hold preliminary and revocation hearings.  
22 (Dkt. No. 44 at 1-2 & Attch. 1 at 1-2.) Petitioner submits that he  
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25 <sup>3</sup> Dkt. No. 44 refers to petitioner's Request to Initiate  
26 Revocation Proceeding filed on December 14, 2016. According to the  
27 clerk's docket, petitioner's accompanying Memorandum of Points and  
28 Authorities is entered as Attachment 1 ("Dkt. No. 44, Attch. 1").  
Petitioner also included a copy of the Inmate Notification of  
Detainer Receipt and labeled it as "Attachment 1," which will be  
referenced as "Dkt. No. 44, Exh. 1" throughout this brief to avoid  
confusion.

1 is entitled to relief under Federal Rule of Criminal Procedure 32.1  
2 as well as principles of due process. (Id.)

3 The thrust of petitioner's argument seems to be that he is  
4 entitled to challenge his state court conviction during revocation  
5 proceedings. (Dkt. No. 44 at 3-4 & Attch. 1 at 3-4.) Petitioner  
6 requests initiation of revocation proceedings for the express purpose  
7 of introducing an alibi witness, who can presumably testify that  
8 petitioner did not commit the robberies and related crimes underlying  
9 the state court convictions. (Dkt. No. 44 at 3-4 & Attch. 1 at 3-4.)  
10 He argues that because his alibi witness may not survive much longer,  
11 the witness may not be able to appear at a revocation hearing in the  
12 future. (Dkt. No. 44 at 3 & Attch. 1 at 3.) Moreover, he requests  
13 an expeditious hearing because "the length of time the defendant  
14 spent in challenging the state criminal charges (8 years)" could lead  
15 to "dim memories" of witnesses and delay could deny "a fair  
16 opportunity for the defendant to effectively cross-examine witnesses  
17 [and] present competent foundational witnesses on his behalf." (Dkt.  
18 No. 44 at 4.)

### 19 **III. ARGUMENT**

#### 20 **A. The Court should dismiss petitioner's request because** 21 **petitioner in state custody is not entitled to initiate** 22 **revocation proceedings until he is in federal custody**

23 The procedural requirements for supervisory revocation  
24 proceedings are formalized in Federal Rule of Criminal Procedure  
25 32.1. See United States v. Santana, 526 F.3d 1257, 1259 (9th Cir.  
26 2008). "[T]he plain language of Rule 32.1 shows that it applies only  
27 once a supervised release violator is in custody for the violation."  
28 United States v. Magana-Colin, 359 F. App'x 837, 838 (9th Cir. 2009).

1 Under Rule 32.1, the defendant may request that counsel be  
2 appointed when the defendant initially appears before the Court after  
3 being "held in custody for violating probation or supervised  
4 release." Fed. R. Crim. P. 32.1(a)(1),(3) (emphasis added). In  
5 addition, Rule 32.1 requires the Court to conduct a preliminary  
6 hearing to determine whether there is probable cause to believe that  
7 a violation of supervised release occurred "[i]f a person is in  
8 custody for violating a condition of probation or supervised  
9 release." Fed. R. Crim. P. 32.1(b)(1)(A). Then, a revocation  
10 hearing is held "within a reasonable time" at a later date to provide  
11 a final disposition on the revocation of supervised release. Fed. R.  
12 Crim. P. 32.1(b)(2). The "operative event that triggers the  
13 requirement of a timely [revocation] hearing" is "custody under a  
14 parole violation warrant, rather than issuance of the warrant."  
15 Magana-Colin, 359 F. App'x at 838 (citing Moody v. Daggett, 429 U.S.  
16 78, 87 (1976) (internal quotations marks omitted)).

17 Here, petitioner is currently in the custody of the California  
18 Department of Corrections and has not been in federal custody for  
19 violating a term of supervised release. Therefore, he is not  
20 entitled to request appointed-counsel or to have preliminary and  
21 revocation hearings. See Fed. R. Crim. P. 32.1; Magana-Colin, 359 F.  
22 App'x at 838. That the court signed a warrant and the government  
23 lodged it as a detainer while petitioner is in state custody is  
24 irrelevant because the issuance of the federal warrant, without  
25 federal custody under the warrant, does not trigger the timeliness  
26 requirement of a revocation hearing under Rule 32.1. See Magana-  
27 Colin, 359 F. App'x at 838 (holding that three-year delay between  
28 issuance of the warrant for supervised release violation and



1 commencement of the supervised release revocation hearing did not  
2 violate Rule 32.1 or Due Process Clause because timeliness  
3 requirement applies once a violator is in custody for the violation).  
4 Accordingly, this Court should dismiss petitioner's request to  
5 initiate revocation proceedings.

6 **B. In the alternative, the Court should deny petitioner's**  
7 **request for relief**

8 The Ninth Circuit has held that a defendant may not collaterally  
9 attack a prior conviction in a supervised release revocation hearing.  
10 See United States v. Garcia, 771 F.2d 1369, 1371 (9th Cir. 1985)  
11 (citing United States v. Lustig, 555 F.2d 751, 753 (9th Cir. 1977)).<sup>4</sup>  
12 In Lustig, the defendant was convicted on four charges relating to  
13 the possession and distribution of cocaine while he was on probation  
14 as a result of a prior conviction for smuggling marijuana. 555 F.2d  
15 at 752. He appealed the district court's probation revocation by  
16 arguing, in part, that the original marijuana conviction and the  
17 cocaine conviction were invalid. Id. at 753. The Ninth Circuit  
18 affirmed the district court's probation revocation because the  
19 defendant could not challenge the revocation decision by collaterally  
20 attacking either the original conviction or the conviction on which  
21 the revocation decision was based. Id.

22 Petitioner's request to initiate revocation proceedings shows  
23 that he is similarly attempting to collaterally attack his state  
24 robbery convictions through revocation proceedings in federal court.

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25 <sup>4</sup> For the purposes of this analysis, "[p]arole, probation, and  
26 supervised release revocation hearings are constitutionally  
27 indistinguishable and are analyzed in the same manner." United  
28 States v. Hall, 419 F.3d 980, 985 n.4 (9th Cir. 2005)(citing United  
States v. Comito, 177 F.3d 1166, 1170 (9th Cir. 1999)). Therefore,  
precedent relating to parole, probation, and supervised release  
revocation hearings all apply equally to petitioner's case. See id.

1 During the state government's investigation, petitioner attempted to  
2 enlist one neighbor as an alibi witness for his whereabouts during  
3 the bank robbery, for which he was convicted in state court. (SR at  
4 1.) Petitioner now requests initiation of revocation proceedings for  
5 the express purpose of introducing the alibi witness, who can  
6 presumably testify that petitioner did not commit the robberies and  
7 related crimes underlying the state court convictions. (Dkt. No. 44  
8 at 3-4 & Attch. 1 at 3-4.) Consistent with this purpose, he requests  
9 an expeditious hearing because "the length of time the defendant  
10 spent in challenging the state criminal charges (8 years)" could lead  
11 to "dim memories" of witnesses and deny "a fair opportunity for the  
12 defendant to effectively cross-examine witnesses [and] present  
13 competent foundational witnesses on his behalf." (Dkt. No. 44 at 4.)

14 As in Lustig, this Court is not the proper avenue through which  
15 petitioner can challenge the underlying state court convictions. See  
16 555 F.2d at 753. Petitioner was given ample opportunity over the  
17 course of eight years to challenge his state robbery conviction at  
18 trial and through appellate procedures in state court. If petitioner  
19 wants to collaterally attack his state conviction in federal court,  
20 he may file a *habeas corpus* petition under 28 U.S.C. § 2254.

21 Supervised release revocation proceedings is not the proper avenue.

22 In addition, petitioner's challenge of his state court  
23 conviction would not alter the fact that "[a] certified copy of [his  
24 state court] conviction in itself constitutes sufficient proof that  
25 [he] has committed a crime in violation of the terms of his  
26 [supervised of release]." Garcia, 771 F.2d at 1371 (internal  
27 quotation marks and citation omitted); see also United States v.  
28 Verduzco, 330 F.3d 1182, 1184-86 (9th Cir. 2003)(holding district

1 court did not violate defendant's due process rights by revoking  
2 supervised release based solely on certified state court conviction  
3 without holding further evidentiary hearing).

4 Accordingly, if the Court does not dismiss petitioner's request,  
5 in the alternative, the Court should deny the request because  
6 petitioner's stated purpose for initiating revocation proceedings is  
7 improper.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the government respectfully requests  
10 that this Court dismiss petitioner's request to initiate revocation  
11 proceedings for supervised release, or in the alternative, deny  
12 petitioner's request.